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10/534,649	01/06/2006	Wilhelmus Henricus Maria Van Cuijk	3135-051381	7097
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THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			EXAMINER THAKUR, VIREN A	
			ART UNIT	PAPER NUMBER
			1782	
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			10/12/2010 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/534,649

**Applicant(s)**VAN CUIJK, WILHELMUS  
HENRICUS MARIA**Examiner**

VIREN THAKUR

**Art Unit**

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16, 17, 19 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 17, 19 and 21-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. As a result of the amendment to the claims, the rejection of claims 16-19, 21-26 under 35 U.S.C. 112, second paragraph, has been withdrawn.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 16, 17 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goltsoy (US 4013798) in view of Webster's dictionary, Hiyoshi (US 20010012530), Igarashi (JP11-049251), Mizuno (US 5989608) and Riess (DE380112) and in further view of Oshima (US 4834247), Brown (US 3219460) and

**Lueneburg (US 2456134), for the reasons given in the previous Office Action, mailed April 28, 2010.**

Regarding the limitation "with at least two compartments shielded from an environment surrounding the package," it is noted that Goltsos as well as Riess (figure 1) for instance, teach multiple compartments that are sealed, where the compartments are shielded from an environment surrounding the packages and are separated from each other. Regarding the limitation "comprising pressure valves" the combination, as applied in the previous Office Action, mailed April 28, 2010, and especially Riess, teaches pressure valves which allow for a medium to flow to relieve pressure when the package accumulates a particular amount of pressure. Regarding the individual compartments opening at different pressure levels, it is noted that the art has recognized that different foods have different degrees of moisture and therefore, when simultaneously cooking such foods, that different levels of pressure can be generated. Furthermore, it would have been obvious to one having ordinary skill in the art that the generation of the pressure as a result of the generation of steam and water vapor due to the moisture content in the food plays a factor in achieving the desired degree of cooking of the food. This has even been evidenced by Oshima, who teaches that there is an increase in pressure during heat cooking of foods due to the moisture (see the abstract). Mizuno also teaches this concept as well, since the valve only opens when the vapor pressure reaches a particular level. Until then, it would have been obvious to the ordinarily skilled artisan that the microwave energy and the steam pressure within the container facilitate achieving the desired degree of cooking of the food.

Therefore, in view of the fact that the art teaches a compartmented container comprising pressure relief valves for each container and since the art teaches that the pressure relief valves can be adjusted for the purpose of relieving a particular amount of pressure based on the particular type of food, to thus modify Goltsos and add pressure relief valves for each compartment that requires a relief of the pressure generated during cooking would thus have been obvious to one having ordinary skill in the art, for the purpose of ensuring that each of the foods achieves a particular desired degree of cooking, while also preventing the package from deforming or bursting.

**5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 16, 17, 24-26 above, and in further view of Doyle et al. (US 3659584) and Toole (US 6307193), for the reasons given in the previous Office Action, mailed April 28, 2010.**

**6. Claims 19 and 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 16, 17, 24-26, above, and in further view of Hammer (WO02087993), for the reasons given in the previous Office Action, mailed April 28, 2010.**

**7. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 22, above, and in further view of Oyama (US**

**6068898) and Jacques (US 5114766), for the reasons given in the previous Office Action, mailed April 28, 2010.**

***Response to Arguments***

8. On pages 7-8 of the response, applicants essentially urge that the combination does not teach or suggest valves which differ from one another based on the pressure level at which they open.

9. Specifically, on page 7 of the response, applicants assert that the claimed invention is different from Goltsoos since the subject invention is directed to containers that include openable passage openings that allow for the maximum pressure achieved in the compartments to vary through the use of pressure valves. Applicants further assert that the valves are able to regulate pressure in the respective compartments and are able to be varied between the compartments so that the maximum pressure achieved in the different compartments can be maximized at different levels. Applicants thus assert that Goltsoos does not teach or contemplate valves having these features but instead the notches in Goltsoos appear to allow built up water vapor to escape when the vapor pressure becomes excessive and thus these notches do not regulate the pressure in and between the compartments as in the present invention.

These arguments have been considered but are not persuasive. Regarding the valves, it is noted that by teaching that the film over the passages of figure 7 prevent water vapor from being released until a particular point in time during the cooking where

the pressure generated during cooking as accumulated such that the seal at those passages releases, Goltso's clearly teaches passage openings that are covered and which regulate the pressure within the container, since the film covering that seals those openings opens during cooking based on the degree of pressure generated. Since Goltso's teaches that these portions only vent when a particular vapor pressure has been reached, the covering over the vent openings clearly regulate the pressure. In view of the definition provided for what can be construed a valve, i.e. something suggestive of a stop, especially in regulating, checking or permitting flow or movement through a passage (see 2<sup>nd</sup> definition in the provided Webster's definition), It is noted that Goltso's at least suggests valves that open to allow for the release of pressure when a particular amount of pressure has built up in the compartments. It is noted that the above definition does not suggest that repeated control is required but only that flow through a passage has been regulated. Thus, it is noted that the notches in figure 7 of Goltso's, in combination with the adhesively sealed film over the notches can be construed to be valves - which thus regulate pressure. Even if it could be construed that the structures taught by Goltso's are not valves, the secondary references provide further evidence of using valves. Furthermore, it is noted that figure 2 of Goltso's employs an arrangement of compartments that is similar to that of figure 7, with the exception that figure 2 also includes passages (36) between compartments, which are collectively released through opening 32. This clearly teaches one of ordinary skill in the art that at a particular point in time, a given amount of steam and thus pressure would have generated within compartment 22, which would have traversed across

passage 36 and out through passage 32. Similarly, a given amount of steam and pressure would also have been generated within compartment 24 which also would have traversed across passage 36 and out through passage 32. On column 4, lines 24-36, Goltsoos even teaches that the compartments may be vented in sequence. This provides further motivation to the ordinarily skilled artisan that the different compartments which contain moisture containing food would have resulted in varied degrees of pressure. Figure 7, in view of the teachings on column 4 also suggests to the ordinarily skilled artisan that when employing individual covered vent openings in each compartment comprising moisture containing food, that different foods having different moisture content would have resulted in a different degree of water vapor (and thus pressure) generated within the compartments.

10. Applicants further assert on page 7 of the response that the references relied on to teach different types of valves which thus regulate the pressure within a cook-in food package, would not have provided the necessary teachings to lead one skilled in the art to modify Goltsoos as proposed.

11. Regarding Brown, applicants assert that Brown is not directed to regulating cooking pressures and would have no use for regulating pressure valves.

This argument is not persuasive. It is noted that Brown has been relied on to provide a generic teaching that different foods packaged within a compartmented container that are to be simultaneously cooked can require different amounts of "cooking" and Brown teaches providing different degrees of cooking control to each



compartment. Brown thus generically teaches individually regulating the cooking for each compartment in a compartmented container based on the particular foods within those containers.

12. Regarding Mizuno, it is noted that Mizuno teaches valves that have been attached to various types of food containers that have been used to cook foods in microwave ovens (see column 5, lines 49-51), where the valves allow for the release of pressure from within the container at a particular point in time during cooking (see column 5, lines 51-59). Obviously, the particular point during which the valve would allow for the release of the pressure generated within the container would have been an obvious function of the particular amount and type of food within the container. Nevertheless, Hiyoshi further teaches that this concept would have been obvious to one having ordinary skill in the art. For instance, Hiyoshi teaches that the vapor pressure generation corresponds to the temperature of the food, because the pressure inside the container increases as the temperature in the container increases, and thus teach altering the pressure resistance properties of the hole sealing sheets for the purpose of controlling the point in time when the pressure can be released (see paragraph 0015-0017 and 0031). Igarashi even further evidences a similar concept by recognizing that the valve can be sized based on the particular degree of pressure release required (see page 5, paragraph 0009 to 0012 of the formal translation and page 5, paragraph 0009 - "The withstand pressure of the release valve 12 composed of the valve element 11 can be set freely by the width and the sealing width L."). Therefore, these references teach that valves have been conventionally controlled to release a particular amount of

pressure based on the particular type of food to be cooked in a microwave, and the degree of cooking desired. Since Goltso's already teaches different foods which can create different amounts of moisture and since Goltso's also teaches that each compartment can contain its own pressure relieve vent, to thus modify Goltso's and employ another conventional pressure relief control mechanism, such as valves would thus have been obvious to one having ordinary skill in the art, for the purpose of being able to control the pressure within each compartment based on the particular food within each compartment. Nevertheless, Riess provides even further evidence that it has been conventional to provide pressure relief valves for each compartment of a compartmented container. For instance, Riess teaches a compartmented container used in microwave cooking (see 2<sup>nd</sup> paragraph of page 2 of the translation), where the valves on each compartment can be opened during cooking as a result of the internal pressure produced during heating (see last paragraph on page 2). Lueneburg only further evidences that different foods require different pressure relief levels. In view of the art taken as a whole, to thus modify Goltso's and employ individual valves which can separately regulate the pressure within each compartment would thus have been obvious to one having ordinary skill in the art, especially since the art has recognized that different foods would release different amounts of steam and moisture, which would have resulted in the generation of a different degree of pressure when cooked in a sealed container in a microwave oven.

Regarding Riess, it is noted that Riess is silent as to the particular pressures at which the valves would allow for the pressure to be released. It is noted however, that

the art teaches providing adhesive strength for a valve which could be varied based on the particular point at which pressure should have been relieved, as evidenced by Oshima for instance on column 3, lines 46-48 and the abstract. Riess further evidences that applicants' are not the first to provide pressure relieving valves for individual compartments of a microwave food tray where the valves can automatically relieve pressure during microwave cooking. It is noted that As discussed above, since the art already teaches that different types of food can generate different amounts of steam during pressure during microwave and pressure type cooking, to thus modify the particular type of valves and the points as which they would allow for pressure relief would thus have been obvious to one having ordinary skill in the art, for the purpose of being able to control the degree of cooking of different types of food which are within separate compartments of a food tray.

13. Applicants urge that Hiyoshi is concerned with preventing explosion within a single compartment food package by releasing a hole-sealing sheet when the food in the container reaches the adequately cooked state and thus does not disclose a means of regulating cooking pressure in different compartments.

It is noted however, that Hiyoshi has been relied on as further evidence that it has been conventional to provide a mechanism on a sealed microwaveable container, which allows for the pressure to be relieved from the container after a particular degree of cooking has been completed, such that the container would not deform. Obviously,

the containment of the pressure within the compartment until a particular period where it is relieved, aides in cooking the product as well.

14. Applicants urge that Oshima teaches a seal that breaks above a certain temperature and not pressure.

This is not persuasive, since in the abstract for instance, Oshima clearly teaches that the heat seals partially open when there is an increase in internal pressure so as to prevent rupture or deformation of the container

15. On pages 8 to 9 of the response, applicants have further submitted pictures of commercial embodiments and a copy of a presentation used by the assignee to achieve commercial success.

On their own these two documents do not provide sufficient evidence of commercial success which would have overcome the prima facie case of obviousness. It is noted that the pictures are not clear as to whether the container is compartmented, for instance. Furthermore, the presentation and these pictures on their own do not sufficiently establish a nexus between the claimed invention and the evidence of commercial success. Applicants have not provided any evidence that any commercial success that may have occurred was attributable to invention as claimed, in a marketplace where the consumer is free to choose on the basis of objective principles

and where the success was not the result of heavy promotion or advertising, a shift in advertising, consumption by purchasers normally tied to the assignee or other business events extraneous to the merits of the claimed invention.

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. T./  
Examiner, Art Unit 1782

/Jennifer C McNeil/  
Supervisory Patent Examiner, Art Unit 1784